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12 | Counsel for Nominal Defendant WATG

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

16 WALTER WASILEFF, derivatively on behalf of  
17 Nominal Defendant WONDER AUTO  
TECHNOLOGY, INC.

Lead Case No. 2:11-cv-01022-GMN-CWH

Consolidated with member cases:

2:11-CV-1108-GMN-CWH  
2:11-CV-1090-GMN-CWH

Plaintiff

10

LARRY GOLDMAN, XIANZHANG WANG,  
QINGDONG ZENG, XIAOYU ZHANG,  
QINGJIE ZHAO, MEIRONG YUAN,  
YUNCONG MA, DAVID MURPHY, and  
XINGYE ZHANG,

## **JOINT STATUS REPORT AND PROPOSED SCHEDULING ORDER**

24 Defendants.

25 -and-

27 | WONDER AUTO TECHNOLOGY, INC.,  
a Nevada Corporation

28 || Nominal Defendant.

1                   **JOINT STATUS REPORT AND PROPOSED SCHEDULING ORDER**

2                   Pursuant to the Court's order during the February 7, 2012 status conference, Plaintiffs  
 3 and Nominal Defendant Wonder Auto Technology, Inc. ("WATG" or "the Company"), by and  
 4 through their undersigned attorneys, hereby submit the following joint status report and  
 5 proposed scheduling order.

6                   **1. Procedural History**

7                   Three separate derivative actions were originally filed in this Court: (1) *Wasileff v.*  
 8 *Goldman, et al.*, No. 11-1022 (filed June 22, 2011) (the "*Wasileff Action*"); (2) *Gidwaney v.*  
 9 *Zhao, et al.*, No. 11-1090 (filed July 1, 2011) (the "*Gidwaney Action*"); and (3) *Chao v. Zhao,*  
 10 *et al.*, No. 11-1108 (filed July 5, 2011) (the "*Chao Action*") (collectively the "Actions"). All  
 11 three complaints name WATG as the nominal defendant and certain of WATG's current and  
 12 former officers and directors as individual defendants.

13                  On July 22, 2011, plaintiffs in the *Wasileff Action* and *Gidwaney Action* filed a motion  
 14 seeking to (1) consolidate the three above-captioned actions; (2) appoint Levi & Korsinsky  
 15 LLP and Doyle Lowther LLP as co-lead counsel; and (3) appoint Cogburn Law Offices and  
 16 Aldrich Law Firm, Ltd. as Co-Liaison Counsel. (Dkt. No. 16.) On October 17, 2011, the Court  
 17 consolidated the *Gidwaney Action* and the *Chao Action* with the *Wasileff Action*. (Dkt. Nos.  
 18 25 and 26.) By order dated January 25, 2012, the Court appointed Levi & Korsinsky LLP and  
 19 Doyle Lowther LLP as Co-Lead Counsel and Cogburn Law Offices and Aldrich Law Firm,  
 20 Ltd. as Co-Liaison Counsel. (Dkt. No. 31.)

21                  During the February 7, 2012 status conference, the Court granted Plaintiffs leave to file  
 22 a consolidated complaint (the "Consolidated Complaint") by March 8, 2012.

23                  **2. Allegations**

24                  These Actions are shareholder derivative lawsuits. Unlike direct actions, in which a  
 25 plaintiff brings suit on his or her own behalf, a derivative suit is an action in which the  
 26 shareholder of a corporation sues on behalf of the corporation asserting a claim that belongs to  
 27 the corporation.

1        These Actions were brought on behalf of WATG, a China-based company incorporated  
 2 in Nevada. The complaints in the three actions generally allege that certain of WATG's current  
 3 and former officers and directors "breach[ed] their fiduciary duties to the Company [by]  
 4 knowingly engag[ing] in improper financial reporting and accounting practices, and  
 5 disseminat[ing] false and misleading statements in violation of SEC regulations and Generally  
 6 Accepted Accounting Principles ("GAAP")." (*Wasileff* Compl. ¶ 4.) In particular, the actions  
 7 allege that, from May 2008 through November 23, 2010, the individual defendants caused or  
 8 allowed the Company to "improperly recognize[] revenue in incorrect financial reporting  
 9 periods" and "improperly engage[] in several transactions without properly disclosing their  
 10 related-party nature." (*Wasileff* Compl. ¶ 64.) The complaints also allege that, due to the  
 11 individual defendants' conduct, the Company lacked adequate internal and financial controls.  
 12 Plaintiffs allege that the Company sustained damage as a result of the individual defendants'  
 13 alleged conduct. (E.g., *Wasileff* Compl. ¶ 5.)

14 **3. Service**

15        The registered agent for Nominal Defendant WATG has been served with the complaint  
 16 in the *Wasileff* Action. The parties have agreed that WATG is under no obligation to respond  
 17 to any complaint until the Consolidated Complaint is filed.

18        None of the individual defendants has been served with the complaint. To the  
 19 Company's knowledge, all but one of the individual defendants resides in China, which is a  
 20 signatory to the Hague Convention on the Service Abroad of Judicial and Extrajudicial  
 21 Documents in Civil or Commercial Matters.

22 **4. Related Actions**

23 Federal Securities Class Action

24        A consolidated federal securities class action is currently pending in United States  
 25 District Court in the Southern District of New York before the Honorable Paul A. Engelmayer,  
 26 which is captioned *In re Wonder Auto Technology, Inc. Securities Litigation*, No. 11-CV-3687-  
 27 PAE (S.D.N.Y.) (the "Federal Securities Class Action"). On December 2, 2011, the lead  
 28 plaintiff in the Federal Securities Class Action filed an amended complaint. The amended

1 complaint names as defendants WATG and two of its former officers, and is based upon the  
2 same set of operative facts as those alleged in this action. Only WATG has been served with  
3 the complaint in the Federal Securities Class Action.

4 On January 27, 2012, the parties submitted a stipulation informing the Court of their  
5 intention to attempt to reach an early resolution of the Federal Securities Class Action. The  
6 stipulation proposed to adjourn the pretrial conference scheduled for February 15, 2012 while  
7 the parties attempted to schedule a mediation, and also provided that WATG would be under no  
8 obligation to respond to the amended complaint while the parties conducted settlement  
9 negotiations. On January 31, 2012, the Court issued an order approving the stipulation and  
10 rescheduling the initial pretrial conference for May 3, 2012, at which time the parties will  
11 report to the Court on progress with respect to the mediation and a potential resolution. The  
12 stipulation and order in the Federal Securities Class Action is attached as **Exhibit 1**.

13 Discovery is stayed in the Federal Securities Class Action pursuant to the Private  
14 Securities Litigation Reform Act of 1995.

15 State Derivative Action

16 A consolidated derivative action is currently pending in Nevada State Court in the First  
17 Judicial District Court in and for Carson City before the Honorable James T. Russell, which is  
18 captioned *In re Wonder Auto Technology, Inc. Derivative Shareholder Litigation*, No. 11 OC  
19 00193 (Nev. Dist. Ct.) (the “State Derivative Action”). The designated operative complaint in  
20 the State Derivative Action names WATG as a nominal defendant, and names certain of  
21 WATG’s current and former officers and directors as individual defendants. It is WATG’s  
22 position that the State Derivative Action is based upon the same set of operative facts as those  
23 alleged in this action.

24 Only WATG and Larry Goldman have been served with the complaint in the State  
25 Derivative Action. By stipulation and order dated February 1, 2012, WATG and Defendant  
26 Goldman have until February 29, 2012 to file a responsive pleading to the complaint in the  
27 State Derivative Action while the parties attempt to schedule a mediation, without prejudice to  
28 a further extension of time. That stipulation and order is attached as **Exhibit 2**. The parties in

1 the State Derivative Action currently are negotiating a further extension of time while the  
2 parties schedule a mediation.

3 On November 16, 2011, the court in the State Derivative Action denied plaintiffs'  
4 request to serve the individual defendants residing in China by publication, and ordered that the  
5 individuals provide their addresses in China and that plaintiffs pursue service through the Hague  
6 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or  
7 Commercial Matters.

8 No discovery has occurred in the State Derivative Action.

9 **5. Mediation**

10 Plaintiffs and WATG, through their counsel, have met and conferred and have agreed to  
11 hold discussions regarding the potential resolution of the claims in this Action. The parties are  
12 attempting to schedule a mediation for April 2012.

13 As was discussed during the February 7, 2012 status conference, counsel for Plaintiffs  
14 and WATG believe that it would serve the interests of judicial efficiency and preserve the  
15 parties' limited resources to extend the time within which WATG must answer, move, or  
16 otherwise respond to the Consolidated Complaint until after the April mediation. At the  
17 Court's direction, the parties have submitted a joint proposed scheduling order to that effect.

18 **6. Legal/Dispositive Issues**

19 Nominal Defendant WATG's Position

20 To the extent that the parties' attempt at mediation is unsuccessful, WATG may raise  
21 the following legal/dispositive issues at the motion to dismiss stage.

22 (1) Plaintiffs lack standing to bring suit on behalf of WATG because they have failed to  
23 plead, with the required particularity, that demand is excused in this derivative action.  
24 Rule 23.1 of the Federal Rules of Civil Procedure—which governs all actions filed in federal  
25 court—requires that “[a] shareholder seeking to vindicate the interests of a corporation through  
26 a derivative suit must first demand action from the corporation’s directors or plead with  
27 particularity the reasons why such demand would have been futile.” *In re Silicon Graphics Inc.*  
28 *Sec. Litig.*, 183 F.3d 970, 989 (9th Cir. 1999); Fed. R. Civ. P. 23.1.

1       Here, because Plaintiffs made no demand upon WATG’s Board of Directors before  
 2 initiating the lawsuit, they are required to “plead with particularity the reasons why such  
 3 demand would have been futile.” *In re Silicon Graphics Inc. Sec. Litig.*, 183 F.3d at 989. To  
 4 do so under Nevada law, Plaintiffs must establish a “reasonable doubt that the board can  
 5 impartially consider a demand.” *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 641 (Nev.  
 6 2006).<sup>1</sup> Nevada law requires Plaintiffs to plead that a *majority* of the current directors either  
 7 (i) lack independence, *i.e.*, are not free from the influence of others in conducting the affairs of  
 8 the corporation; or (ii) are “interested” in the litigation at issue, meaning that the directors’  
 9 “actions were so egregious that a substantial likelihood of director liability exists.” *Id.* at 640.  
 10 It is WATG’s position that Plaintiffs have not pled with the requisite particularity that a  
 11 majority of WATG’s current directors either lack independence or are interested in the  
 12 litigation at issue, and thus have failed to demonstrate that demand is properly excused in this  
 13 action.

14       (2) This action should be stayed in favor of the Federal Securities Class Action. In the  
 15 interest of time and effort for the court, counsel, and litigants, a federal court has the inherent  
 16 power to control the disposition of cases on its docket, as well as the incidental power to stay  
 17 proceedings in a pending suit. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). Given the  
 18 substantial similarities between the two actions, prosecution of this lawsuit would conflict with  
 19 the Company’s defense of the pending class action, thereby resulting in substantial harm to  
 20 WATG. In these types of situations, federal courts—including courts in this District—  
 21 routinely stay derivative actions in favor of parallel federal securities class actions. *See, e.g., In*  
 22 *re Ormat Techs., Inc. Derivative Litig.*, No. 10-0177, 2011 U.S. Dist. LEXIS 96891, at \*15 (D.  
 23 Nev. Aug. 29, 2011) (granting stay of federal derivative action pending resolution of federal

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24  
 25       <sup>1</sup> While the Federal Rules of Civil Procedure govern the pleading requirement Plaintiffs  
 26 must meet—*i.e.*, that allegations of demand futility be pled with “particularity”—the  
 27 substantive standard for determining whether demand should be excused is based upon the law  
 28 of the state where WATG is incorporated, Nevada. *E.g., Kamen v. Kemper Fin. Servs., Inc.*,  
 500 U.S. 90, 108-09 (1991).

1 securities class action); *Rosenblum v. Sharer*, No. CV 07-6140 PSG, 2008 U.S. Dist. LEXIS  
 2 65353 (C.D. Cal. July 28, 2008) (same); *Cucci v. Edwards*, No. SACV 07-532 PSG (MLGx),  
 3 2007 U.S. Dist. LEXIS 86832 (C.D. Cal. October 31, 2007) (same); *Breault v. Folino*, Case  
 4 No. 5A CV 01-0826 GLT (ANx), 2002 U.S. Dist. LEXIS 25587 (C.D. Cal. March 15, 2002)  
 5 (same).

6       (3) In the alternative, this derivative action should not proceed in two jurisdictions. As  
 7 the court recently explained in *Sabbag v. Cinnamon*, No. 10-2735, 2010 U.S. Dist. LEXIS  
 8 131086, at \*23-24 (N.D. Cal. Dec. 10, 2010): “[I]n a derivative action, the shareholder-  
 9 plaintiffs ostensibly are suing on behalf of the corporation to remedy wrongs committed against  
 10 the corporation. Proceeding with two separate derivative actions, each seeking to remedy the  
 11 same wrongs, serves only to injure the corporation and its shareholders by forcing the  
 12 corporation to incur duplicative litigation expenses.” *Id.*

13           Plaintiffs’ Position

14       WATG has not moved to dismiss or stay any of Plaintiffs’ claims. Should WATG file a  
 15 dispositive motion or move to stay in the future, Plaintiffs will then respond.

16      **7. Discovery**

17       The parties agree to defer formal discovery at this time. It is WATG’s position that  
 18 discovery is inappropriate in derivative actions before plaintiffs have established that they have  
 19 standing to bring suit. *E.g., In re Openwave Sys. S’holder Derivative Litig.*, 503 F. Supp. 2d  
 20 1341, 1351-53 (N.D. Cal. 2007) (“Rule 23.1 reflects a Congressional intent that derivative  
 21 actions pass certain hurdles before being allowed being allowed to proceed with the normal  
 22 course of litigation, including discovery.”). Plaintiffs reserve the right to request discovery  
 23 from the Court at a time before the Court has ruled upon the pleadings in this case.

24       In addition, as discussed above, the parties intend to attempt to resolve Plaintiffs’ claims  
 25 in this action through mediation.

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1       **8. Proposed Scheduling Order**

2           The parties submit the following proposed scheduling order to govern WATG's  
3 obligation to respond to the Consolidated Complaint if the parties' attempts to resolve this  
4 Action at mediation in April are unsuccessful.

5           1.       The parties will provide a status update to the Court on or before May 4, 2012  
6 regarding the outcome of the parties' mediation.

7           2.       If the parties' attempts at mediation are unsuccessful, or if WATG files a  
8 responsive pleading in the Federal Securities Class Action or State Derivative Action before a  
9 mediation occurs, the parties in this Action will meet and confer about any responsive pleading  
10 or other motion WATG may file.

11          DATED: February 22, 2012

/s/ James R. Hail

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29 **Counsel for Nominal Defendant WATG**

1 \* \* \*

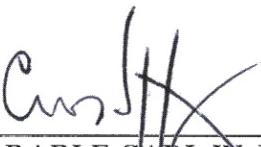
2 IT IS HEREBY ORDERED THAT:

- 3 1. The parties will provide a status update to the Court on or before May 4, 2012  
4 regarding the outcome of the parties' mediation.
- 5 2. If the parties' attempts at mediation are unsuccessful, or if WATG files a  
6 responsive pleading in the Federal Securities Class Action or State Derivative Action before a  
7 mediation occurs, the parties in this Action will meet and confer about any responsive pleading  
8 or other motion WATG may file.

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10 DATED: February 23, 2012

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12   
HONORABLE CARL W. HOFFMAN  
13 UNITED STATES MAGISTRATE JUDGE

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## **CERTIFICATE OF SERVICE**

I hereby certify that on this 22<sup>nd</sup> day of February, 2012, I caused to be filed and served through the United States District Court's ECF system, a true and correct copy of the foregoing JOINT STATUS REPORT AND PROPOSED SCHEDULING ORDER, to:

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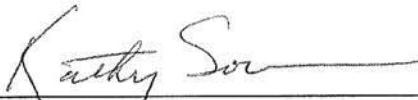
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1 I also hereby certify that on this 22<sup>nd</sup> day of February, 2012, I served a copy of the  
2 above-referenced documents via U.S. Mail, at Reno, Nevada, in a sealed envelope with first-class  
3 postage fully prepaid, addressed as follows:

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